Public Works (1902) Department.

G.O., No. 1429 }
1430 }

DATED 6th December 1902

Proof

90/3 copies of G.O.

38/2 copies of letter with docket at the back for the G.O.

20 copies of letter for records.

8/12/02

[Despatch Abstract.]

Peranai Suit. Ordered that a copy of the order of the Subordinate Judge of Madura West dismissing the temporary injunction petition of the plaintiff in the —— be forwarded to the Govt of India

Peranai Suit. Forwarding for information a copy of the order of the Subordinate Judge of Madura West dismissing the temporary injunction petition of the plaintiff in the ——

P. W. 36.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

IRRIGATION.

Government {1902} of Madras.

PUBLIC WORKS.

Recd.	1902.	*Enclosures*
Regd.		*Spare copies*

G.O., No. 1429 I., 6th December 1902.

DECEMBER.

Peranai Suit

Ordered that a copy of the order of the Subordinate Judge of Madura West dismissing the temporary injunction petition of the plaintiff in the — be forwarded to the Government of India.

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Irrigation.

Read—the following paper :—

G.O., No. 891, Revenue, dated 2nd October 1902.

Abstract.—Recording letter from the Collector of Madura forwarding copy of the order of the Sub-court of Madura dismissing the plaintiff's temporary injunction petition in the Peranai suit, together with copies of certain documents referred to in the court's order.

Order—No. 1429 I., dated 6th December 1902.

Ordered that the following letter be despatched to the Government of India.

[Here enter No. 1430 I., dated 6th December 1902.]

(True Extract.)

(Signed) A. W. SMART, Col., R.E.,
Joint Secretary to Government,
Irrigation Branch.

To the Chief Engineer for Irrigation.
,, Superintending Engineer, VI Circle.
,, Revenue Department.

Exd. T. K. Narayana Aiyangar.

IRRIGATION.

Government {1902} of Madras.

PUBLIC WORKS.

Recd. } 1902. *Enclosures*

Regd. *Spare copies*

Letter, No. 1430 I., 6th December 1902.

DECEMBER.

Peranai Suit

Forwarding, for information, a copy of the order of the Subordinate Judge of Madura West dismissing the temporary injunction petition of the plaintiff in the —.

PUBLIC WORKS DEPARTMENT.

Irrigation.

Letter—from

A. W. SMART, Col., R.E.,
Joint Secretary to the Government of Madras,
Public Works Department,
Irrigation Branch,

To

The SECRETARY to the GOVERNMENT of INDIA,
Public Works Department,
Irrigation, Roads and Buildings.

Sir,

I am directed to forward herewith, for the information of the Government of India, a copy of the judgment of the Subordinate Judge, Madura West, on an application of certain lower riparian proprietors for a temporary injunction to restrain the Government from carrying out regulating works at the Peranai anicut across the Vaigai until the suit which was instituted by them last year, and is now pending, for the removal of a temporary bund placed by Government to raise the crest of the anicut, has been decided. An allotment of Rs. 20,000 (for works only) for putting in the foundations of the regulator and head sluice was made with the approval of the Government of India from the grant of 4 lakhs sanctioned by that Government under Provincial—43. Minor Works and Navigation.

Vide G.O., No. 892 I., dated 4th August 1902.

2. An appeal has been preferred against the judgment of the Subordinate Judge to the High Court of Judicature, Madras, and is pending disposal. The result of the appeal will be communicated to the Government of India in due course.

I have the honour to be,
Sir,
Your most obedient servant,

(Signed) A. W. SMART, Col., R.E.,
Joint Secretary to Government,
Irrigation Branch.

Madras,
6th December 1902.

Exd. T. K. Narayana Aiyangar.

Annexure to Letter No. 1430 I., dated 6th December 1902.

IN THE SUBORDINATE COURT, MADURA WEST.

Present.

T. M. Rangachari, Esq., Subordinate Judge.

Thursday the 11th day of September 1902.

Miscellaneous Petition No. 251 of 1902.

(Original Suit No. 22 of 1901.)

Mr. R. Fischer ... ... First plaintiff (petitioner).
The Secretary of State for India in Council ... Defendant (counter-petitioner).

Application under section 492 of the Code of Civil Procedure praying that, in the circumstances set forth, the court will be pleased to issue a temporary injunction restraining the defendant from pushing on with the works at the Peranai.

This application coming on for hearing, upon reading the petition and the affidavit and the counter-affidavit in the case, and upon hearing the arguments of the Hon'ble Mr. E. Norton, counsel for the petitioner, and the Honourable the Advocate-General, counsel for the counter-petitioner, the court passed the following :—

Order.—In the suit, the complaint is, defendant-Government has illegally put up a new construction on the old Peranai dam, thereby diminishing the flow of water in the Vaigai for the use of the lower riparian proprietors. First plaintiff, Mr. Fischer, asks for a permanent injunction restraining defendant from any interference with the dam or its original crest level.

2. The present application is interlocutory in which the applicant Mr. Fischer says (1) that the defendant has, since the settlement of issues in the suit, put up newly a turf bund $3\frac{3}{4}$ feet in height over the new construction on the dam complained of in the suit with the result that there has been a further diminution in the flow of water in the river; and (2) that the defendant is now constructing a new dam and the object of defendant in constructing these new works is to alter the existing state of things so that plaintiffs may be deprived of their evidence. On these grounds first plaintiff, Mr. Fischer, asks for a temporary injunction.

3. An *interim* injunction has been granted at first plaintiff's request, pending determination of this application.

4. I have read the affidavits filed in connection with the application and heard the argument adduced by counsel on both sides. I am of opinion that plaintiff has not made out any case for a temporary injunction.

5. What appears is: the Government is building a new regulator. Under the existing arrangements, the Periyár channel periodically gets choked up with sand. Defendant has to remove the silt, time after time. To mend matters, the new regulator has been projected. At present, only a part of the foundations has been laid. It is quite unconnected with the dam which is the subject-matter of the plaintiff's suit. To enable defendant to construct the foundations for the new regulator, it has been found necessary to throw turf bunds over the existing dam in places temporarily. Otherwise, the projected foundations would be flooded. It does not at all appear that the flow of water in the river has appreciably diminished in consequence. This is the crucial test in the case. Defendant is constructing an independent work quite unconnected with the suit dam. If the work, when completed, is such as to be injurious to plaintiff's rights as has been argued before me it is clear that I can give no reliefs to plaintiff in the present suit, the cause of action being entirely different. The suit now is in connection with the existing dam. Plaintiff says defendant has made it higher than it used to be. The new works concerned altogether another projected dam which will take two years to complete. It is represented for defendant that the old dam will be abandoned when the new one works without any hitch.

6. Government has the right to carry on any works it wants on the river bed without prejudice to the rights of the lower riparian proprietors. Having regard to the suit, it has no right to meddle with the existing dam. It does not appear that Government is meddling with it. True it has caused turf bunds to be thrown across it in places, but that has not diminished the water-supply in which the lower riparian proprietors are interested. This is very clear from the affidavit put in by Mr. Keeling, the District Engineer in charge of the works. I quite admit that the said affidavit is not artistic. The affidavit taken as a whole undoubtedly shows that notwithstanding the turf bunds the usual flow of water in the river is maintained. What

appears is that there is the flow of the same volume of water though in a narrower stream on the left flank of the anicut. Mr. Fischer is a lower riparian proprietor with property situated miles away from the dam. I utterly fail to see how he is damnified by the new works.

7. Thus, it will be seen that there is no diminution of the flow of water in the river and defendant is not tampering with any existing evidence available to the plaintiffs.

8. As pointed out by the Advocate-General, section 493 of the Civil Procedure Code has no application in the circumstances disclosed. I think the case in 27, Chancery Division, 122 (Kensit *versus* Great Eastern Railway Company) cited by the Advocate-General is a very similar case to this one and it was decided against the lower riparian proprietor on the ground that the accustomed flow of water was not interfered with and therefore he had suffered no substantial loss. The fact is that the turf bunds have been thrown only in places. It does not appear that plaintiffs have suffered any material injury. The foundations to the new regulator is not shown to be injurious to the plaintiffs ; so that the applicant has absolutely no case for a temporary injunction. It will be seen that the putting up of the turf bunds in places, if an injury at all, is not a serious one. There is authority for the position that in such a case the courts should not interfere. See the case in 1 Chancery, A. 354.

9. I think that as contended for by the Advocate-General, I should not grant the injunction prayed for under (D) of section 56 of the Specific Relief Act. The provision relates to permanent injunctions, but I take it that the same principles govern in regard to both permanent and temporary injunctions. See I.L.R., 6 Bom., p. 279.

10. The case cited by Mr. Norton, namely, Newson *versus* Pender 27 Chancery Division, 43, appears inapplicable.

This petition is dismissed.

(Signed) T. M. RANGACHARI,
Subordinate Judge.

IN THE SUBORDINATE COURT OF MADURA WEST.

Original Suit No. 22 *of* 1901.

Between

R. Fischer and others ... ... Plaintiffs,

and

The Secretary of State for India in Council ... ... Defendant.

I, Hugh Trowbridge Keeling, of Madura, Executive Engineer, Madura division, solemnly and sincerely make oath and say as follows :—

(1) That the new works in progress are a regulator and new head sluice for the main canal.

(2) That the object of the new works is to prevent sand choking the main canal as is the case at present.

(3) That the floor of the new regulator is at 614·62 above M.S.L. which is within a few inches of the lowest bed-level of the Vaigai at the site.

(4) That the sill of the new head sluice is the same as that of the present sluice, viz., 617·62 above M.S.L.

(5) That, in order to put in the foundation of the regulator, it is necessary to prevent water flowing over the anicut immediately in front of the new works.

(6) That the bund referred to in the plaintiffs' petition has been erected with other bunds to divert water to the rear of the new works.

(7) That the bund is not 6 feet above the old crest level.

(8) That the effect of the bund is to divert all water over the left flank of the anicut and through the present scouring sluices.

(9) That the defendant has not in consequence of these works affected the quantity of water drawn into the main canal which is under effective control.

(10) That it is not true that the defendant is depriving the plaintiff of an important piece of evidence firstly because plans of the works as they exist are already deposited in court and secondly because the existing works cannot be permanently interfered with until the new works are completed which will take at least two years.

That there has been no alteration beyond temporarily making more use of the left flank of the anicut.

Sworn to
this 9th day of September 1902.

Before me

(Signed) T. M. RANGACHARI,
Sub-Judge.

(Signed) H. T. KEELING,
Executive Engineer.

IN THE SUBORDINATE COURT OF MADURA WEST.

C.M.P. 251 *of* 1902.

Original Suit 22 of 1901.

That I, Maila Pillai Doraisami Pillai, do solemnly affirm and state as follows:—

(1) That at the order of my master Robert Fischer, Esq., I went to the Peranai dam across the Vaigai on 19th July 1902.

(2) That the Government has put up a turf bund of about $3\frac{3}{4}$ feet in height over the falling shutters and the masonry constructions already constructed over the original crest level of the Peranai.

(3) That the said turf bund prevents the water flowing over the falling shutters.

(4) That the falling shutters are mostly imbedded in the turf bund now put up.

(5) That the new works are being carried on in the bed of the Vaigai below the Peranai almost right across the river from the old scouring sluice to the bank opposite.

(6) That below the Peranai a portion of the foundation of the new construction has been laid and the work is being rapidly pushed through.

(7) That there were about 500 coolies in all working there on the 20th July 1902.

(8) That if there should be any freshes now in the Vaigai, the water would be obstructed by the turf bund now put up to the height of about 6 feet from the old crest level of the Peranai.

28th July 1902. (Signed) M. DORAISAMI PILLAI.

Solemnly affirmed before me.

(Signed) R. HARI ROW,
Special Magistrate, Madura.

28th July 1902.

PW 105

Government {1902} of Madras.

REVENUE.

Office Register
Return

Recd. 24—x— } 1902.

Regd. 24—x— }

Enclosures

Spare copies

G.O., No. 891, 2nd October 1902. Prew

OCTOBER.

1 Abstract

S.p

Peranai Suit

Recording letter from the Collector of Madura forwarding copy of the order of the sub-court of Madura dismissing the plaintiff's temporary injunction petition in the —, together with copies of certain documents referred to in the court's order.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

Read—the following letter from A. G. CARDEW, Esq., M.A., I.C.S., Collector of Madura, to the Secretary to Government, Revenue Department, dated 18th September 1902, Ref. on Cur. No. 2518-Genl. of 1902:—

In continuation of my letter, Ref. on Cur. No. 2518-Genl. of 1902, dated 13th September 1902, I have the honour to forward herewith a copy of the court's order passed on Mr. Fischer's temporary injunction petition in Original Suit No. 22 of 1901 on the file of the sub-court, Madura West.

2. Copies of the affidavits referred to in the court's order are also submitted.

Enclosures.

IN THE SUBORDINATE COURT, MADURA WEST.

Present.

T. M. Rangachari, Esq., Subordinate Judge.

Thursday the 11th day of September 1902.

Miscellaneous Petition No. 251 of 1902.

(Original Suit No. 22 of 1901).

Mr. R. Fischer	...	First plaintiff (petitioner).
The Secretary of State for India in Council	...	Defendant (counter-petitioner).

Application under section 492 of the Code of Civil Procedure praying that, in the circumstances set forth, the court will be pleased to issue a temporary injunction restraining the defendant from pushing on with the works at the Peranai.

This application coming on for hearing, upon reading the petition and the affidavit and the counter-affidavit in the case, and upon hearing the arguments of the Hon'ble Mr. E. Norton, counsel for the petitioner, and the Honourable the Advocate-General, counsel for the counter-petitioner, the court passed the following :—

Order.—In the suit, the complaint is, defendant-Government has illegally put up a new construction on the old Peranai dam, thereby diminishing the flow of water in the Vaigai for the use of the lower riparian proprietors. First plaintiff, Mr. Fischer, asks for a permanent injunction restraining defendant from any interference with the dam or its original crest level.

2. The present application is interlocutory in which the applicant Mr. Fischer says (1) that the defendant has, since the settlement of issues in the suit, put up newly a turf bund $3\frac{3}{4}$ feet in height over the new construction on the dam complained of in the suit with the result that there has been a further diminution in the flow of water in the river; and (2) that the defendant is now constructing a new dam and the object of defendant in constructing these new works is to alter the existing state of things so that plaintiffs may be deprived of their evidence. On these grounds first plaintiff, Mr. Fischer, asks for a temporary injunction.

3. An *interim* injunction has been granted at first plaintiff's request, pending determination of this application.

4. I have read the affidavits filed in connection with the application and heard the argument adduced by counsel on both sides. I am of opinion that plaintiff has not made out any case for a temporary injunction.

5. What appears is: the Government is building a new regulator. Under the existing arrangements, the Periyár channel periodically gets choked up with sand. Defendant has to remove the silt, time after time. To mend matters, the new regulator has been projected. At present, only a part of the foundations has been laid. It is quite unconnected with the dam which is the subject-matter of the plaintiff's suit. To enable defendant to construct the foundations for the new regulator, it has been found necessary to throw turf bunds over the existing dam in places temporarily. Otherwise, the projected foundations would be flooded. It does not at all appear that the flow of water in the river has appreciably diminished in consequence. This is the crucial test in the case. Defendant is constructing an independent work quite unconnected with the suit dam. If the work, when completed, is such as to be injurious to plaintiff's rights as has been argued before me it is clear that I can give no reliefs to plaintiff in the present suit, the cause of action being entirely different. The suit now is in connection with the existing dam. Plaintiff says defendant has made it higher than it used to be. The new works concerned altogether another projected dam which will take two years to complete. It is represented for defendant that the old dam will be abandoned when the new one works without any hitch.

6. Government has the right to carry on any works it wants on the river bed without prejudice to the rights of the lower riparian proprietors. Having regard to the suit, it has no right to meddle with the existing dam. It does not appear that Government is meddling with it. True it has caused turf bunds to be thrown across it in places, but that has not diminished the water-supply in which the lower riparian proprietors are interested. This is very clear from the affidavit put in by Mr. Keeling, the District Engineer in charge of the works. I quite admit that the said affidavit is not artistic. The affidavit taken as a whole undoubtedly shows that notwithstanding the turf bunds the usual flow of water in the river is maintained. What appears is that there is the flow of the same volume of water though in a narrower stream on the left flank of the anicut. Mr. Fischer is a lower riparian proprietor with property situated miles away from the dam. I utterly fail to see how he is damnified by the new works.

7. Thus, it will be seen that there is no diminution of the flow of water in the river and defendant is not tampering with any existing evidence available to the plaintiffs.

8. As pointed out by the Advocate-General, section 493 of the Civil Procedure Code has no application in the circumstances disclosed. I think the case in 27, Chancery Division, 122 (Kensit *versus* Great Eastern Railway Company) cited by the Advocate-General is a very similar case to this one and it was decided against the lower riparian proprietor on the ground that the accustomed flow of water was not interfered with and therefore he had suffered no substantial loss. The fact is that the turf bunds have been thrown only in places. It does not appear that plaintiffs have suffered any material injury The foundations to the new regulator is not shown to be injurious to the plaintiffs; so that the applicant has absolutely no case for a temporary injunction. It will be seen that the putting up of the turf bunds in places, if an injury at all, is not a serious one. There is authority for the position that in such a case the courts should not interfere. See the case in 1 Chancery, A. 354.

9. I think that as contended for by the Advocate-General, I should not grant the injunction prayed for under (D) of section 56 of the Specific Relief Act. The provision relates to permanent injunctions, but I take it that the same principles govern in regard to both permanent and temporary injunctions See I.L.R., 6 Bom., p. 279.

10. The case cited by Mr. Norton, namely, Newson *versus* Pender 27 Chancery Division, 43, appears inapplicable.

This petition is dismissed.

(Signed) T. M. RANGACHARI,
Subordinate Judge.

IN THE SUBORDINATE COURT OF MADURA WEST.

Original Suit No. 22 *of* 1901.

Between

R. Fischer and others ... ... Plaintiffs

and

The Secretary of State for India in Council ... ... Defendant.

I, Hugh Trowbridge Keeling, of Madura, Executive Engineer, Madura division, solemnly and sincerely make oath and say as follows :—

(1) That the new works in progress are a regulator and new head sluice for the main canal.

(2) That the object of the new works is to prevent sand choking the main canal as is the case at present.

(3) That the floor of the new regulator is at 614·62 above M.S.L. which is within a few inches of the lowest bed-level of the Vaigai at the site.

(4) That the sill of the new head sluice is the same as that of the present sluice, viz., 617·62 above M.S.L.

(5) That, in order to put in the foundation of the regulator it is necessary to prevent water flowing over the anicut immediately in front of the new works.

(6) That the bund referred to in the plaintiffs' petition has been erected with other bunds to divert water to the rear of the new works.

(7) That the bund is not 6 feet above the old crest level.

(8) That the effect of the bund is to divert all water over the left flank of the anicut and through the present scouring sluices.

(9) That the defendant has not in consequence of these works affected the quantity of water drawn into the main canal which is under effective control.

(10) That it is not true that the defendant is depriving the plaintiff of an important piece of evidence firstly because plans of the works as they exist are already deposited in court and secondly because the existing works cannot be permanently interfered with until the new works are completed which will take at least two years.

That there has been no alteration beyond temporarily making more use of the left flank of the anicut.

Sworn to
this 9th day of September 1902.

Before me
(Signed) T. M. RANGACHARI,
Sub-Judge.

(Signed) H. T. KEELING,
Executive Engineer.

IN THE SUBORDINATE COURT OF MADURA WEST.

C.M.P. 251 *of* 1902.

Original Suit 22 of 1901.

That I, Maila Pillai Doraisami Pillai, do solemnly affirm and state as follows :—

(1) That at the order of my master Robert Fischer, Esq., I went to the Peranai dam across the Vaigai on 19th July 1902.

(2) That the Government has put up a turf bund of about $3\frac{3}{4}$ feet in height over the falling shutters and the masonry constructions already constructed over the original crest level of the Peranai.

(3) That the said turf bund prevents the water flowing over the falling shutters.

(4) That the falling shutters are mostly imbedded in the turf bund now put up.

(5) That the new works are being carried on in the bed of the Vaigai below the Peranai almost right across the river from the old scouring sluice to the bank opposite.

(6) That below the Peranai a portion of the foundation of the new construction has been laid and the work is being rapidly pushed through.

(7) That there were about 500 coolies in all working there on the 20th July 1902.

(8) That, if there should be any freshes now in the Vaigai, the water would be obstructed by the turf bund now put up to the height of about 6 feet from the old crest level of the Peranai.

28th July 1902. (Signed) M. DORAISAMI PILLAI.

Solemnly affirmed before me.

28th July 1902.

(Signed) R. HARI ROW,
Special Magistrate, Madura.

Order—No. 891, Revenue, dated 2nd October 1902.

Miscellaneous.

Recorded.

(True Extract.)

(Signed) M. HAMMICK,
Ag. Secretary to Government.

Copy to the Public Works Department (Irrigation).
,, the Board of Revenue (Land Revenue).
,, the ,, (Revenue Settlement).
,, the Advocate-General.

Forwarded to the Public works Dept. (Irrigation)

(By Order.)

C. Ratnavelu Mudr.
Registrar.

Exd. Shaik Karim.

60 Copies.

PUBLIC WORKS DEPARTMENT;
IRRIGATION BRANCH.

H. E.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

application for temporary injunction in the Perianai suit.

READ the following: —

G.O. No. 891 Revenue dated 2nd October 1902.

Circulate with abstract

Pulse

—— No. 1429 I. aj 6th December 1902

Ordered that the following letter be despatched to the Govt. of India: —

A
10-11-02

(H. E. No. 1430 I. 6th Decr: 1902)

To The C.E. for Irrig.
" S.E. VI Circle
" Rev. Dept.

DESPATCHED
20 DEC. 1902

To The Secy. to the Govt. of India
P.W.D. Irrig. Roads & Buildings

Sir,

I am directed to forward herewith for the information of the Govt. of India, a copy of the Judgment of the Subordinate Judge, Madura West, on an application of certain lower riparian proprietors

4/11

P.W.D. Irrig. No 125 U.O. of 4.11.02

Rev. No. 837
5.11.02

SECRETARY TO GOVERNMENT
4 NOV. 1902
REVENUE DEPARTMENT

Print annexure to L. No. 1430 d. 6.12.1902

Issue
4/12/02
D. I.

~~across the Vaigai~~ for a temporary injunction to restrain the Govt. from carrying out ~~the~~ regulating works at the Peranai Anicut, across the Vaigai, until the suit which was instituted by them last year, & is now pending, for the removal of a temporary ~~[illegible]~~ bund placed by Govt. to raise the crest of the anicut has been decided. An allotment of Rs 20,000 (for works only) for putting in the foundations of the Regulator & Head sluice was made with the approval of the Govt. of India from the grant of 4 lakhs sanctd. by that Govt. under Provincial 43 Minor Works & Navigation.

vide G.O. No. 892 dy 4th August 1902.

H

2. An appeal has been preferred against the Judgment of the Subordinate Judge to the High Court of Judicature Madras and

The result of the appeal will be commd. to the Govt. of India in due course.

Stands ~~posted~~ for hearing before this Court on the 4th Nov., the results of which will be reported in due course.

1

3

[signature] 4/12/02

[signature] 29/10/02

Issue

[signature] 31/11/02

2

DESPATCHED
20 DEC. 1902

[signature] 10-11-02

[signature] 29.10.02

48

17

26-12-43 VI

11.8.50 SV

~~24.10.~~
24.11.53 SS.

21/12/74/56.